



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: ORDINANCE AMENDING THE
PROCEDURE FOR INITIATING
A CITY LANDMARK

DATE: September 14, 2009

Approved

Paul Krutz

Date

9/17/09

COUNCIL DISTRICT: Citywide
SNI AREA: All

RECOMMENDATION

Consider an ordinance of the City of San José Amending Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code, entitled "Designation," to revise Section 13.48.110.C to allow the City Council greater discretion on whether to initiate the procedure for the designation of a landmark so nominated.

OUTCOME

The proposed ordinance would streamline the procedure for the designation of a landmark.

BACKGROUND

Currently, there are three steps in the process of designating a landmark: Nomination, Initiation and Designation. The current designation process is shown in Figure 1 and described below.

Nomination

The nomination of a landmark is simply the act of applying for landmark status with the Director of Planning, Building and Code Enforcement. A nomination can be determined to be complete if it includes the required documentation, which typically includes an application form, photos, and a historic report for the subject site.

Initiation

The initiation process is currently a mandatory requirement of the Historic Preservation Ordinance. The required City Council initiation hearing includes a referral of the proposal to the Historic Landmarks Commission for comment and recommendation, and setting a public hearing for the City Council to consider the proposed designation.

Designation

The designation process is the action that adds landmarks to the Historic Resources Inventory. In order to designate a landmark, the Council needs to make findings that the landmark has special historical, architectural, cultural, aesthetic, or engineering interest or value of a historical nature, and that its designation as a landmark conforms to the goals and policies of the General Plan. In making such findings, the following factors may be considered, among other relevant factors, with respect to the proposed landmark:

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;
2. Its location as a site of a significant historic event;
3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
4. Its exemplification of the cultural, economic, social or historic heritage of the city of San José;
5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the city of San José;
8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

On April 8, 2009, the City Council Rules and Open Government Committee accepted a memo from the City Attorney's Office directing staff to modify Section 13.48.110(C) of the Historic Preservation Ordinance, the section entitled "Procedure for designation of a landmark." Recommendation was made to change the word "shall" to "may" in the provision which says, "When the nomination documentation is complete, the city council, by resolution, shall initiate the procedure for the designation of a landmark so nominated." This change would provide the City Council discretion during the initiation process and prevent the need for multiple City Council hearings on the same matter.

ANALYSIS

Current Designation Process (Figure 1)

In accordance with the Historic Preservation Ordinance, the City Council, the Historic Landmarks Commission, or a property owner may nominate any potentially historic property for designation as a City landmark. Under the current process, once the nomination is determined to be complete by the Director of Planning, Building and Code Enforcement, the City Council by resolution formally initiates the procedure for the designation of a landmark by announcing the date the designation will be placed on a future Council agenda for consideration and referring the matter to the Historic Landmarks Commission for its recommendation. Since the ordinance states that, "When the nomination documentation is complete, the City Council, by resolution, shall initiate the procedure for the designation of a landmark so nominated," the City Council appears to have little discretion in determining whether or not to initiate the designation procedure.

Once the procedure is initiated, the proposed designation is considered by the Historic Landmarks Commission at a public hearing where the Commission makes a recommendation to the City Council of approval, disapproval or modified approval. After receiving a recommendation from the Historic Landmarks Commission, the City Council holds a public hearing where the Council may approve, disapprove, or give modified approval to a proposed designation.

Option 1 for Streamlining the Designation Process (Figure 2)

The Rules and Open Government Committee directed staff to revise Title 13 to reflect that the Council is not required to initiate a landmark designation process.

The proposed revision requested by the Committee would expressly clarify the City Council's discretion to choose whether or not to initiate the procedure for the designation of a landmark. If nominated by the City Council or property owner, the designation would go to the Historic Landmarks Commission for its recommendation to the City Council. With the proposed revisions, nominations by the Historic Landmarks Commission could be considered by the City Council for designation without the need for an additional hearing by the Historic Landmarks Commission on the matter of designation since the Commission's recommendations on a matter would be included in the Commission's nomination documentation.

As proposed, if the City Council votes against initiating the designation process at a public hearing, the procedure is terminated and no further hearing on the matter is held. This revision would accomplish the City Council's goal of clarifying that the Council has a choice of whether or not to initiate the landmark designation process. With this revision, if the City Council does not initiate the process of a property owner-nominated landmark designation, the Historic Landmarks Commission would not have an opportunity in the process to advise City Council regarding the proposed designation.

For property owner or City Council-nominated landmarks, if the City Council initiates the designation process during a public hearing, the matter would be referred to the Historic

Landmarks Commission for its consideration and recommendation. The matter would go back before City Council for an additional public hearing to decide whether or not to designate the property. This revision would accomplish the City Council's goal of having the express choice of whether or not to initiate the landmark designation process; however, this process continues to require multiple hearings by the City Council on the same matter.

Option 2 for Streamlining the Designation Process (Figure 3)

Planning Staff and the Historic Landmarks Commission recommend that the designation process remove the formal City Council initiation step(s). Under this approach, landmark applications would not be placed on the City Council agenda simply for the purpose of initiating the process. Instead, the procedure would be initiated by the Director of Planning, Building and Code Enforcement when the Director releases a public hearing notice of the time, place, and purpose for the Historic Landmarks Commission and City Council hearings for designation.

By eliminating the formal initiation process at the Council level, the City Council would be able to take into consideration the recommendation of the Historic Landmarks Commission for all nominations prior to deciding whether or not to support the designation during the only City Council public hearing on the matter. This process would accomplish the goal of eliminating multiple Council hearings on the same matter. In addition, under this alternative, the Historic Landmarks Commission would be able to provide recommendations on the proposed designation in all instances as to whether or not the proposed designation has special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature and/or it conforms with the goals and policies related to historic resources of the City of San José General Plan. This alternative would achieve the City Council's goal of streamlining the process by requiring only one hearing by the Historic Landmarks Commission and only one hearing by the City Council.

EVALUATION AND FOLLOW-UP

Staff will be returning to the City Council with additional landmark designations under any ordinance approved by Council.

POLICY ALTERNATIVES

Following are the policy alternatives considered in the analysis of the proposed ordinance:

Alternative #1: Keep the current designation process.

Pros: Under the current process, once the nomination is determined to be complete by the Director of Planning, Building and Code Enforcement, City Council by resolution formally initiates the procedure for the designation of a landmark by announcing the date the designation will be placed on a future agenda and referring the matter to the Historic Landmarks Commission for its recommendation.

Cons: Since the ordinance states that, “When the nomination documentation is complete, the City Council, by resolution, shall initiate the procedure for the designation of a landmark so nominated,” the City Council appears to have little discretion as to whether or not to initiate the designation procedure.

Reason for not recommending: This alternative would not meet the immediate goals of the City Council to clarify and streamline the historic landmarks designation process.

Alternative #2: Change the word “shall” to “may” in the provision which says, “When the nomination documentation is complete, the City Council, by resolution, shall initiate the procedure for the designation of a landmark so nominated.”

Pros: This alternative would accomplish the City Council’s goal of clarifying that the Council has the express choice of whether or not to initiate the landmark designation process.

Cons: Under this alternative, if the City Council votes against initiating the designation process at a public hearing, the procedure is terminated and no further hearing on the matter is held. Therefore, the Historic Landmarks Commission would not have an opportunity in the process to advise City Council regarding the proposed designation when a private property owner is the nominating entity.

Reason for not recommending: This alternative does not streamline the designation process since multiple hearings by the City Council on the same matter would still be required.

Alternative #3: The Director of Planning, Building and Code Enforcement would initiate the procedure for landmark designation by releasing a public hearing notice of the time, place, and purpose for the Historic Landmarks Commission and City Council hearings for designation.

Pros: This alternative would accomplish the City Council’s goal of streamlining the process by reducing the number of hearings required for the designation process.

Cons: Under this alternative, the City Council cannot terminate the procedure for designation at the initiation stage of the process.

Reason for recommending: This alternative would achieve the City Council’s goal of streamlining the process by requiring only one hearing by the Historic Landmarks Commission and only one hearing by the City Council.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, public input occurred at two public meetings of the Historic Landmarks Commission and Planning Building and Code Enforcement's Developer Roundtable. Also, staff has been available to discuss the proposal with members of the public.

At the August 5, 2009 Historic Landmarks Commission meeting, the Commission reviewed the draft ordinance reflecting the Rules and Open Government Committee's proposed designation process, and an alternative proposal from staff that would also limit the multiple City Council hearings on the same matter, as described in this report. Members of the public and the Preservation Action Council spoke in favor of staff's proposal. The Commission expressed concern that the initial proposal would limit the public's ability to participate in the process. The Commission requested that it have the opportunity to review a draft ordinance reflecting staff proposal at the next regular meeting.

At the September 2, 2009 Historic Landmarks Commission meeting, the Commission reviewed the draft ordinance reflecting staff's proposal. They recommended staff's alternative stating that it achieved the goal of streamlining the process in a manner that seemed fair, efficient and open, and asked that the draft language be changed for clarity's sake.

COORDINATION

This memorandum and the proposed ordinance changes were coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies including the *Urban Conservation/Preservation* and *Historic, Archaeological and Cultural Resources (HACR) Policies*.

COST SUMMARY/IMPLICATIONS

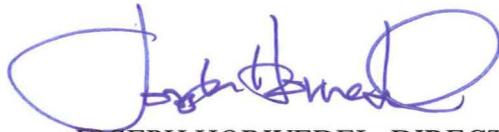
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.

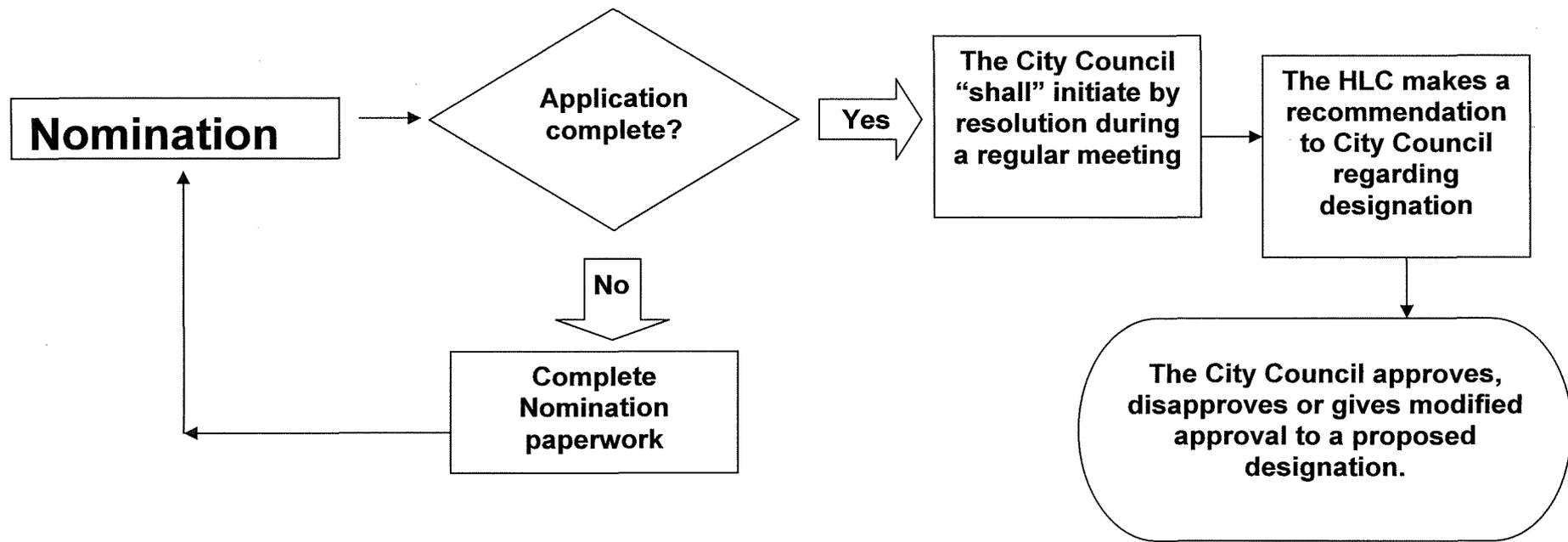


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Akoni Danielsen at 535-7823.

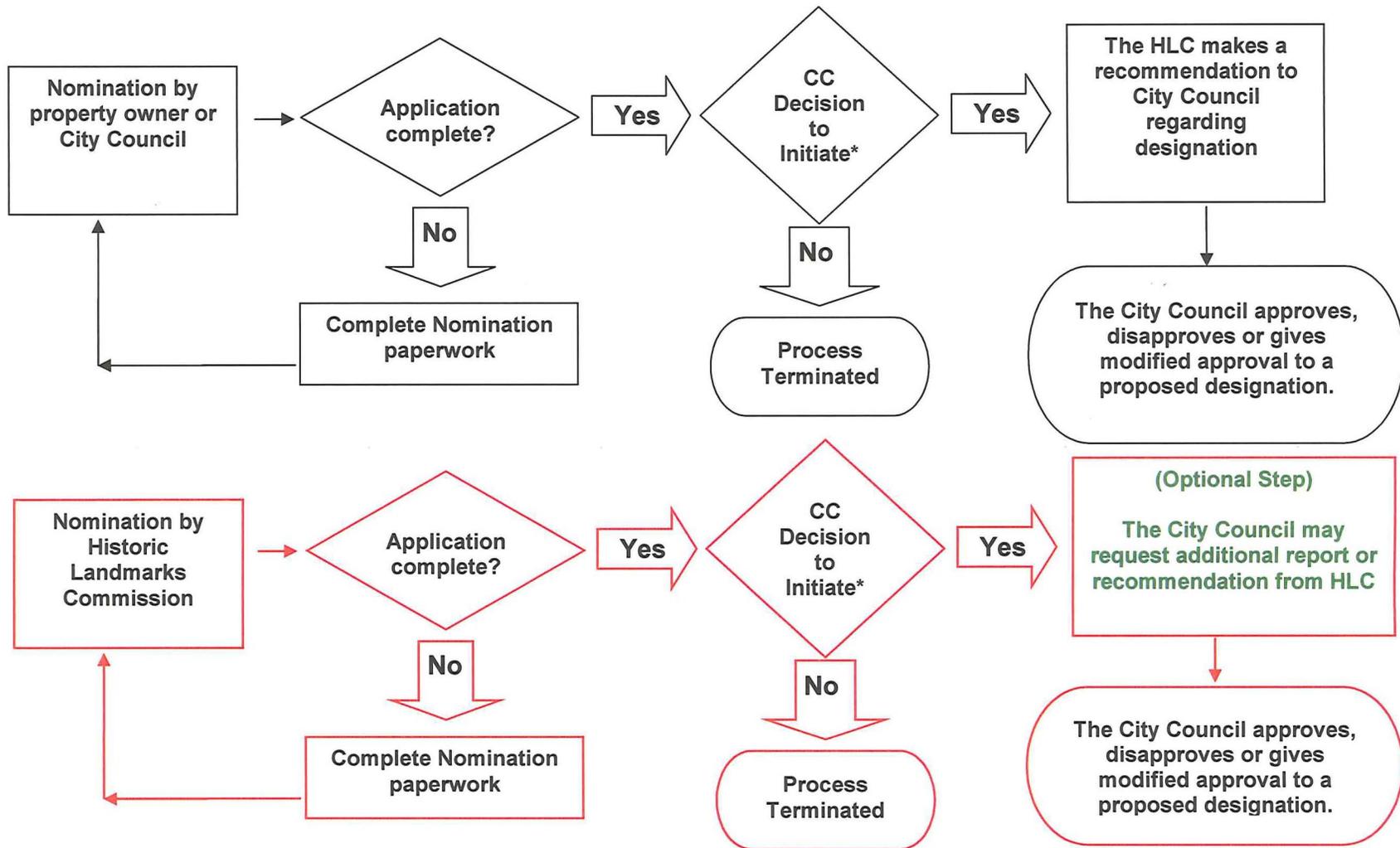
Attachments:

- Figure 1: Current Designation Process
- Figure 2: Rules Committee Proposed Designation Process
- Figure 3: Staff Recommended Designation Process



- **Nomination** – The process of submitting an application to designate a landmark by the City Council, Historic Landmarks Commission or property owner.
- **Initiation** – The procedure to formally begin the process to consider whether or not to designate a landmark.
- **Designation** – The city council by written resolution may approve, disapprove, or give modified approval to a proposed designation
- **Landmark** - Any of the following which have a special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature: 1) An individual structure or portion thereof; 2) An integrated group of structures on a single lot; 3) A site, or portion thereof; or 4) Any combination thereof.

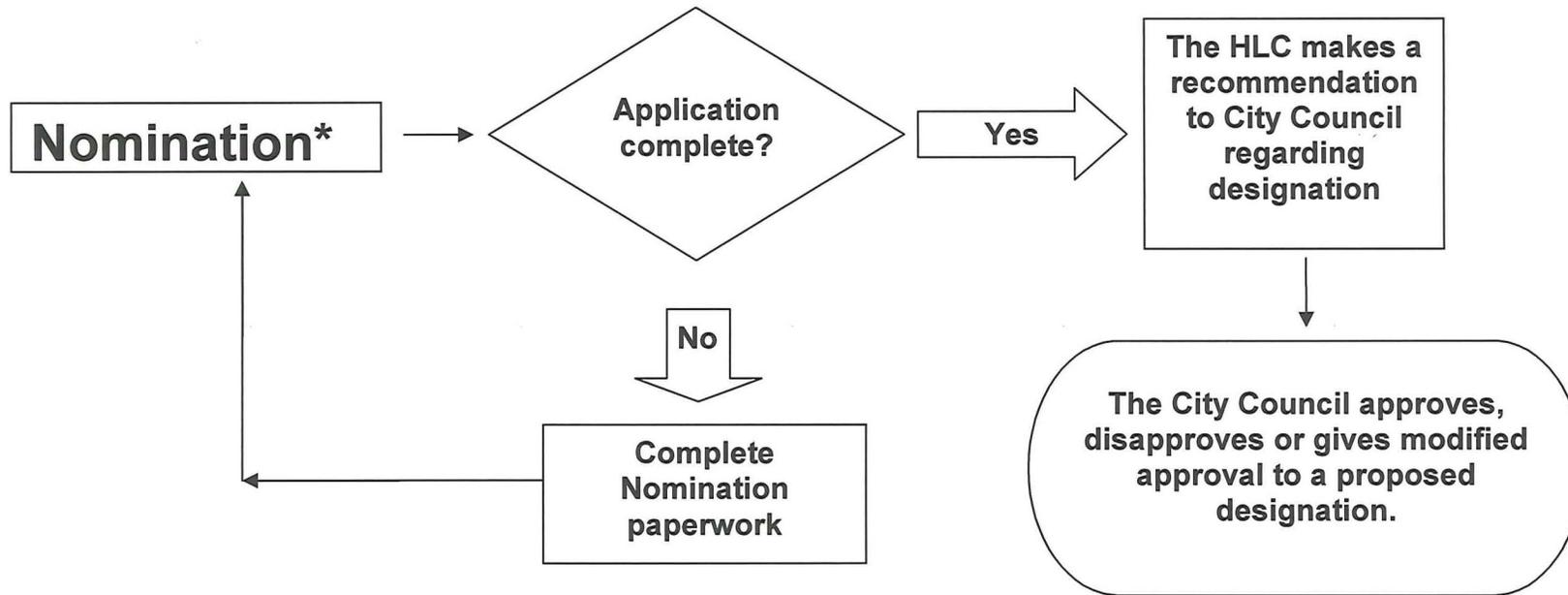
Figure 1. Current Designation Process



- **Nomination** – The process of submitting an application to designate a landmark by the City Council, Historic Landmarks Commission or property owner.
- **Initiation** – The procedure to formally begin the process to consider whether or not to designate a landmark.
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- **Landmark** - Any of the following which have a special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature: 1) An individual structure or portion thereof; 2) An integrated group of structures on a single lot; 3) A site, or portion thereof; or 4) Any combination thereof.

*The City Council “may” initiate by resolution during a public hearing.

Figure 2. Rules Committee Proposed Designation Process



- **Nomination** – The process of submitting an application to designate a landmark by the City Council, Historic Landmarks Commission* or property owner.
- **Designation** –The city council by written resolution may approve, disapprove, or give modified approval to a proposed designation
- **Landmark** - Any of the following which have a special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature: 1) An individual structure or portion thereof; 2) An integrated group of structures on a single lot; 3) A site, or portion thereof; or 4) Any combination thereof.

* Nominations by the HLC will take place at duly noticed public hearings of the Commission and be forwarded directly to City Council for consideration of designation.

Figure 3. Staff Proposed Designation Process